Supreme Court, U.S.
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No._____

In the Supreme Court of the United States

EBBIE PAUL MUNOZ, PRO SE, *Petitioner*

v.

CENTRAL TELEPHONE COMPANY NEVADA; ET AL
-Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 9th Circuit

PETITION FOR WRIT OF CERTIORARI

EBBIE PAUL MUNOZ ; Pro Se
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QUESTIONS PRESENTED

Does the P.U.C. have the right to deny consumers' rights to a fair and equal right of protection under the CONSTITUTION'S AMENDMENTS 5 and 14, without proper due process of law? Do they have the right to close doors on intrastate and interstate issues of the most difficult cases of the system? Are they powerful enough to allow Telco's to act in a criminal manner? Can the P.U.C. legally overlook procedures in reference to records, witnessing, arbitrary and capricious acts? Does the P.U.C., an administrative state agency, have the force of law to stone wall consumers and rule over Federal Jurisdiction in toll-fraud cases? Does Sprint have the right to deny law enforcement officers records? Does the P.U.C. have to put burden of evidence on Mobroz? Can the P.U.C. be reviewed under arbitrary and capricious acts? Did Sprint have the right to deny their responsibility and jeopardize national security?

PARTIES

The Petitioner, he is the licensed owner of Las Vegas, Informer, an adult entertainment business in Las Vegas, Nevada, 1516 E Tropicana #151, 89119. Upon information and belief of the petitioner the respondent, SPRINT TELEPHONE CO. is a licensed carrier in the State of Nevada (Las Vegas). Sprint is the company responsible for the lack of security and daily operations of the phone lines sold, to the petitioner at times, specified herein and as up to today are owners of all cable and faculties of unsecured network (See Appendix L).

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Interim order denying motion for protective order and denying motion to compel was entered on April 1, 2002

The Public Utilities Commission- Regulatory Operations Staff's Post-Hearing Brief - August 16, 2002

The Public Utilities Commission- order was entered on September 23, 2002.

The Public Utilities Commission- appeal was invoked at September 23, 2002.

The Public Utilities Commission- motion for appeal was denied the same day, September 23, 2002.

United States District Court of Southern Nevada- complaint for recovery of damages was filed on August 30, 2004.

United States District Court - Oral argument was held on January 24, 2005

United States District Court - Dismissal of Complaint was filed on February 8, 2005.

Appeal to the United States 9th Circuit Court of Appeals was filed on September 28, 2005.

United States 9th Circuit Court- Judgment was entered March 29, 2006.

A petition for rehearing en banc was filed on April 17, 2006.

Denial for the petition for rehearing en banc was filed on July 31, 2006

JURISDICTION AND VENUE

Pursuant to 28 U.S.C.A. 1746, Petitioner brings forth this petition for a writ of Certiorari in a timely action for **RECOVERY OF DAMAGES** pursuant to the laws of the United States **47 U.S.C.A. Sec.207.** This Court has subject matter jurisdiction under **28 U.S.C.A. Sec.1331 and 28 U.S.C.A. Sec.1338.** This Court has personal Jurisdiction over the Respondent Sprint Telephone Company where they are licensed in the State of Nevada (Las Vegas) as a Carrier under both under state and federal jurisdiction of interstate and intrastate.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Munoz does not believe that congress would have wished to close the doors of the courts to the petitioner. His claim for relief under his constitutional rights under the U.S. codes was NEVER rebutted and Sprint NEVER handed over vital information to the P.U.C. STAFF. They destroyed records in the case, used oppression of their office to keep employees quiet or lose their jobs. Sprint threatened P.U.C. staff, stating they would sue the P.U.C. for being mistreated. In an ex parte meeting with Commission members behind closed doors, Sprint would use their political POWER. They could lose their jobs; **The Whistle Blower Act (Policy 2.06 Sec 554.001 Government code)** should step up for the abuse to the public (See Appendix J-A-43-60, O-A-134-162). An administrative hearing, which was denied over deceit and failure to produce vital records, proved Munoz' case to have arbitrary and,

capricious standards of review. See **Southwestern Bell v. Public Utilities Commission 208 F.2d 475(5TH 2OOO) THE COURT IN PACIFIC BELL V. PAC WEST TELECOMM. INC. 325 F.2d 1114 (9th cir 2000). US West vs. Sprint (cite 275 F.3d1241.)(10th Circuit 2002):** which addressed the force of law of the P.U.C. rulings; thus making the final order of P.U.C. stand without the force of law. The decision, absent to the contrary, Congress may rather be presumed to have intended courts should fulfill their traditional role of defining and maintaining the proper bounds of administrative discretion and safeguarding the rights of the individual, of consumers fraud against unfair trade acts, causing INTERFERENCE OF COMMERCE towards the public (See Appendix P- A-163-217).

The telecommunication act, **title 47 U.S.C.251, 252,263A,** with the guidance of the FCC, is to PROTECT the PUBLIC. Not to destroy or to endanger national security (see Appendix T-A-254-269). CONGRESS DID NOT INTEND TO BAR JUDICIAL REVIEW OF THE P.U.C. IN CERTAIN CASES. The AGGRIEVED petitioner made all Filing dates for state and federal statues of limitation of 2 years for recovery of damages under **USCA TITLE 47 ACT SEC 207. UNDER DIRECTION OF LEGAL CONSUL. STUCKEY vs. WINBERGER 488 FEDERAL REPORTER 2D SERIES 909, 3 Cite; Cappadora v. Celebrezze, 356 F.2d 1(2D CIR. 1966)** He argues that decisions not to reopen are reviewable, for abuses of discretion, under the **administrative procedure ACT. ("APA") (5 USC. 701-706.**

The APA authorizes judicial review of "final agency action for which there is no adequate remedy in a court. This last attempt for someone to do their job and understand the importance of the basis of this cry for help is not just for the petitioner, but also for the public safety of networks. Networks that hold important databases accessed by telecommunication switches that hold us from terrorist groups of cyber war that have access to SS7 network WHICH IS THE BACKBONE OF THE

TELECOMMUNICATION OF THE US. (See Appendix T-A-254-269). P.U.C. FACTS and FINDINGS of Staff (See Appendix A 1a-16a) show the need of the review of the procedures and standards to insure the public integrity in the P.U.C. They are brushing this issue under the carpet, complaints keep generating in Nevada, and to understand that nobody can get any relief until Sprint realizes they are not above the law and they should take responsibility for the unsecured network and help protect customers from inland terrorist groups of the world today. TO GET SPRINT TO HELP IN THIS MATTER TODAY IS MORE DIFFICULT, DUE TO SPRINT PLAYING a SHELL GAME TO THE PUBLIC. SPRINT HAS SHUT DOWN THEIR SECURITY OFFICE in NEVADA. In addition, Sprint WILL NOT work with any LAW officials (See Appendix M-A-102-111, N-A-112-A-133) and NOBODY knows what to do except for to HIDE THE ISSUE. It seems as if there is no protection for consumers.

Not even for the Secret Service Cyber Task Force (See Appendix V-A-283-288). This is an outcry for the public to review standards to mandate Telco's and their obligation of breach of contracts, security, background checks of switch engineers, and turn over records under seal if necessary. They failed to disclose information to all investigators and should have been sanctioned and fined for their actions (See Appendix N-112-133). In the P.U.C. hearing hiding its faults in a full administrative hearing making up rules as they go along and then do not enforce the ones on the books **NRS 703.370, NRS 703.340 NRS 703.195 NRS 703.190, NRS 703.196 703.350 703.340703 .196** Enforcement statues of the state of Nevada.

Today telephone issues, REACH NATION WIDE RAPIDLY ROBBING THE COUNTRY BLIND BY NETWORKS. The country NEEDS HELP to take back America from the criminals of today. Records on appeal fully state the impurities of Sprint and the P.U.C. As petitioner was aggrieved by commission and parties suffered legal wrong by action, under **title 47 sec 402, 122, 18** administrative provisions, A REVIEW IS

GRANTED **U.S. v STORER BROADCASTING CO.US.DIST COL.1956, 76 SCt. 763.351.U.S 192.100.LED 1081**. The National Telecommunications and Information Administration Organization Act enacted Title 47 under the Title 42 for the Public health, and welfare, Congress findings that Telecommunications and information are vital to the public and Welfare of National Security.

The competitiveness of the United States and the critical need for competent information polices are essential for branches of the Federal Government. The P.U.C.'s own facts and findings found Sprint security breaches of the ss7 network is the back bone of the infrastructure Jeopardized National Security (See Appendix M-A-102-111 A-A-16). The Interference of Commerce and Unfair Trade Laws should preempt federal jurisdiction UNDER THE CLAYTON ACT. **SEC 12-27 .of Title 15 Van Dussen -Stora Motor Inn v Rochester Tele phone Corp**. Petitioner was financially ruined by these proceedings and preceded in proper person to invoke his constitutional rights under United States Supreme Court rulings of **BOUNDS vs. SMITH**., to BRING these issue to light in a time of war (See Appendix Q-A-218-226).

To be barred by res judicata ruling. To bar petitioner from presenting his claims that were both intrastate and interstate issues, P.U.C. and Sprint's trickery knowing that issues were from state to state creating the wall to stay above the law the thousands of documents generated at P.U.C. hearing to document events. Preempt federal jurisdiction, to open the door to U.S. District Court. P.U.C. FEDERAL ISSUES were never resolved DUE TO PENDING FEDERAL FBI Strike Force AND HOMELAND SECURITY INVESTIGATIONS (See Appendix M-A-102-111-A-109, P-A-163-217).

In **RE DeLOREAN MOTOR CO.991 F.2d 1236, (6TH CIR.1993) AT 1240**; the court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations. As, and determine whether

the plaintiff undoubtedly can prove no set of facts in support of his CLAIMS THAT ENTITLE HIM TO RELIEF. Under **NRS 703.373 SEC 6** a, f, arbitrary or capricious ACTS characterized by abuse of discretion of confecting state and federal statues and procedures (See Appendix V-A-284-298, P-A-163-217). **LAWLER vs. MARSHALL, 898 F.2D 1196, 1199 (6th cir. 1990)** cite omitted; A complaint need only give "fair notice of what the plaintiff's claim is and the grounds upon which it rest." This petitioner has looked for the court to apply all the liberal standards that may apply when interpreting the claims before the court (**See Bercoon, Weiner, Glick and Brook v. Manufactures Hanover Trust Co,N.D.ILL 1993, 818 F ,SUPP.1152**) on a motion to dismiss for failure to state claim. The district court must interpret ambiguities in complaint in favor of plaintiff. Plaintiff is free in defending against motion to allege without evidentiary support any facts that they please that are consistent with complaint in order to show that there is state of facts, within the scope of the complaint in order to show that if proved would entitle them to judgment.

STATEMENT OF CASE

Munoz, Petitioner has operated several businesses in Clark County for, many years. In 1992, Munoz filed complaint with F.B.I. alleging that his incoming telephone calls routed through Sprints Network were being diverted to competitors. MUNOZ has filed complaints with F.C.C MUNOZ also FILED COMPLAINTS, SECRET SERVICE CYBER TASK FORCE. ORGANIZED CRIME STRIKE TASK FORCE, ATTORNEY GENERAL OFFICE, HOME LAND SECURITY, AND INLAND HOME LAND SECURITY, SECURITY EXCHANGE COMMISSION worked with officers on several investigations on an undercover basis putting, PETITIONER and family at risk after numerous subsequent contacts with officials. Sprint would not corporate with any law OFFICIAL or STAFF of the P.U.C. (See Appendix A-A-1-16 ,R-A-227-242, S-A-243-253) towards the security problem with no progress towards a solution. This problem has never been solved up to this date, with no adequate remedy at law, from the un-securing of business networks sold to consumers leaving no consumers protection. Lack of security to public networks, which also services State and Federal Government agencies are at risk and have been compromised (See Appendix L-A-85-101, P-A-163-217, **171**). The aggrieved petitioner was harmed by **ARBITRARY AND CAPRICIOUS ACTS OF THE P.U.C.** knowing the P.U.C. did not have the funds are the expertise to check network integrity. Without Sprint's corporation, it is impossible to solve the problem of the community since there were several complaints from different business such as: limos, cabs, pizza, bail bonds, private eyes, attorneys, and florists. These various businesses made consumer complaints with the P.U.C. **LAW OFFICIALS WERE DENIED TO TESTIFY AT THE LAST MINUTE DUE TO SPRINTS POLITICAL INFLUENCE.** These HOMELAND SECURITY officers had worked on cases that made

arrests of fired employees of Sprint the ongoing Federal Investigations (See Appendix P-A-163-217, J-A-42-68) involvement of cases of call diversion. This made the state P.U.C. hearing take a back seat, to the FBI Investigations (See Appendix P-A-163-217).

REASONS FOR GRANTING WRIT

Petitioner comes forth with said petition due to the times of War and the future nation's security rest on telecommunications of our daily lives. Phone lines and simple passwords access mainframe computers. After deregulation the technology has grown at a rapid rate, has ran off and left consumers behind has left the public at corporation mercy individuals don't have the expertise to check the integrity of Telco's or access, resources P.U.C. have to relie on the word of Sprint. Please(See Appendix J-A-42-68 and you will see that deceptive acts of Sprint, which crumbled the P.U.C.'s integrity towards the public UNDER TITLE, **47 SEC 229(b).**

Systems security and integrity, require Sprint to maintain secure and accurate records of any interception or access with or without such authorization of the Communications Assistance for law enforcement act [47 U.S.C.A. $ 1004] Sprint's lack of integrity needs to establish the appropriate polices and procedures for the supervision and control of its officers and employees.(See Appendix A-A-1-16 Conflicts of interest of parties of commission and the attorney general office due to the lawsuit filed by Petitioner commission should have hired an out side consul, as the petitioner worked on investigations with attorney general office. Commission used attorney general office as consul, which was a GREAT CONFLICT OF INTEREST. (See Appendix O-A-134-162) which lacked integrity to Petitioner? The P.U.C. has been stonewalling complaints since 1991 to the point of petitioner had to, file a writ of mandate on April 11,1999 (STATE OF NEVADA DISTRICT COURT CASE NO. A 401763) towards a solution , Petitioner voluntarily dismissed the case April 29,1999 When the commission agreed to investigate, After over one year of delay by the P.U.C. .Petitioner filed another writ of mandate on May 19, 2000(STATE OF NEVADA DISTRICT COURT CASE NO. A 419237) Petitioners rights kept being violated by oppression under color of office. Petitioner was seeking commission to hold

a public hearing to investigate the numerous complaints of Nevada. (See Appendix J-A-42-68) the P.U.C. wasting of time creating a paper chase.

Petitioner was trying to exhaust his remedies at law. The continuing behavior of parties that lack ethics and integrity of NRS procedures violates several of the petitioner's constitutional rights. Petitioner could file a complaint tomorrow (See Appendix R-A-227-242, S-A 243-253, W-A-289-293) with the P.U.C., and waste everybody's time and resources to run people in circles again, to have the same outcome to no adequate remedy of law and to have no resolution towards the problem. Due to lack of ethics needs for review of procedures, to protect consumers' rights that deal with State and Federal issues for proper due process. The lady of Justice is crying for help this is happening across the United States. It is time for the parties to cut their losses, stand up, and fight for our rights. This cancer that is taking over our businesses of Nevada deserves the proper discloser of information instead of pushing consumers in front of a truck for resolution of complaints. The financial burden and irreparable damages, to small business of today deserves a review of standards of procedures for deceptive, abuse of discretion in the State of Nevada.

CONCLUSION

For the forgoing reasons, the judgment of the Court of the appeals should be reversed and the case remanded with instructions to the District Court to review the procedures for P.U.C. decision. That has State and Federal issues presented to be fact by the P.U.C. Staff that ENDANGERS the PUBLIC and RISKS National Security at a time of War. While these acts towards the consumers lack integrity, the arbitrary and capricious acts were Blanton, deceptive acts towards the courts. The entire record from start to present shows the deceit by a monopoly of the State of Nevada that CONCEALS it security breaches and FAILED TO DISCLOSE was allowed to DESTROY RECORDS BY PERJURY.

A CORPORATION should not be Above the Law. The P.U.C. function is to resolve complaints and to protect the public interest the state agency has failed the public. All procedures need to be reviewed to better help serve the public .NRS statues need to revised, to catch up with technology and abuse of today. P.U.C. handling of over 50 complaints is just in one industry is (run and hide, close the door, be quiet they will be out of money soon, and go away. Complainants and Petitioner have lost everything including his family, due to organize crime issues. Petitioner spent over $500,000 in time and money since 1992. Petitioner has thousands of documents and expert testimony, that was generated of past and present access of SS7network events (See Appendix K-A-69-83). Bringing these issues that pledge our society at these times, due to rapid growth of our technology, law officials show P.U.C. CAN'T KEEP UP WITH cyber criminals of INLAND TERRORIST GROUPS having accessing to data basis, with personal information of networks. This makes the public at risk to identity theft (See Appendix T-A-276, X-A-309-341). Petitioner asks, if the FBI cannot protect its own lines than what is a consumer supposed to do? (See Appendix P-A-183). The

tariffs are no relief for the public tariffs are in favor of the Telco's. All other carriers ATT, MCI, QUEST long distance, LOCAL MGC etc. are all resellers of Sprint and tariffed to pay Sprint, for usage of cable facilities . Carriers being competition of Sprint, all have filed anti trust suits against, Sprint for blocking of their networks provided by Sprint. There again, the public is at the bottom of the chain, end-to-end guarantees are false hopes (See Appendix L-A-84-101).

The 30-day appeal was an escape door. That was untimely STATUE due to Federal issues of the hearing (See Appendix N-A-112-133, A-A-1-16) and amount of review transcripts, documents, testimony .hearing procedures, everybody took to hide behind. The District Court allowed Sprint's attorney to draft and order which was not consistent with the transcripts of 1-24-2005 (See Appendix Q-A-218-226). They should have recognized the USCA Title 47 ACT Telecommunications takes control over State issues presented. The bate and switch of proposed testing to Petitioner was another time delay of promises that were not kept due to threats to P.U.C. closed all efforts to find a resolution. The breaches of security Sprint is mandated to keep bell core standards mandated by the FCC. The intrastate and interstate federal jurisdiction preempts 800#'s of telephones' toll fraud which left the P.U.C. without the force of law (See Appendix J-A-42-68). P.U.C. knew that they did not have the expertise to check the integrity of a network or the resources (See Appendix X-A-294-339) to place the burden of proof on Petitioner were unreasonable for several reasons (See Appendix U-A-270-282). No access or recourses to check network petitioner is a consumer that pays for services. Petitioner is not a telephone company with the equipment or expertise, despite the fact that the petitioner managed to prove several incidents and brought forth several issues to the plate. Petitioner comes forth with petition of writ certiorari, as this is the last hope for the public to be treated fairly. Exhibits and records incorporated of appeal show the publics out cry for help. Petitioner respectfully submits the said writ of certiorari.

DECLARATION IN SUPPORT OF PETITION OF WRIT OF CERTIORARI

I, EDDIE PAUL MUNOZ, sworn under oath that said affidavit is true and correct to the best of my knowledge. I, EDDIE PAUL MUNOZ, since 1991 have been going thought the said statements pertaining to the lack of ethics and standards of procedures of facts and findings of criminal acts conducted by Sprint and the P.U.C. Their discretions toward the court were deceptive acts and they should have been held in contempt of court of petitioner's rights for judicial review of the P.U.C. As up to 2006, unfair business practices in Nevada are not in consumers and public issues of national security and are leaving Nevadans at risk. These crimes are spreading through the country at an alarming rate.

January 2, 2007
Sworn Under Chapter 52 Penalty of Perjury

(s)_____
EDDIE PAUL MUNOZ

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

EDDIE PAUL MUNOZ, PRO SE
PETITIONER

VS

CENTRAL TELEPHONE COMPANY
NEVADA; ET AL
RESPONDENTS

PROOF OF SERVICE

I, EDDIE PAUL MUNOZ, do swear or declare that on THIS DATE, MARCH 4, 2007, as required by SUPREME COURT RULE 29 I have served the enclosed MOTION for LEAVE to PROPER (pro se) PERSON and PETITION FOR A WRIT OF CERTIORARI AND JOINT APPENDIXES 1-5 on each party to the above proceeding or that parties consul, and on every other person required to be served , by depositing an envelope containing the above documents in the UNITED STATES mail properly addressed to each of them and with first-class postage prepaid or by delivery to a third -party commercial

carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows;

PATRICK J. REILLY ESQ.
HALE LANE PEEK DENISON
AND HOWARD
3930 Howard Hughes Parkway
4th Floor
Las Vegas, NV 89109
TELEPHONE 702-222-2500

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 3-4, 2007

(s) _____
EDDIE PAUL MUNOZ

APPENDIX A

Louise Uttinger, Esq.
Nevada State Bar No. 1971
PUBLIC UTILITIES COMMISSION OF NEVADA
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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Eddie Munoz vs. Central Telephone Company Of Nevada, d/b/a Sprint of Nevada. Complaint Alleging incoming calls are being blocked or Diverted from customer's business.

_____/

Docket No. 00-6057

_____/

REGULATORY OPERATIONS STAFF'S POST-HEARING BRIEF

Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada ("Commission"), hereby submits its brief regarding Mr. Eddie Munoz' complaints of call diversion, call blocking, poor quality of service and lack of security on the Sprint (previously Central Telephone Company-Nevada, or "Centel") telephone system from the early 1990's to the present date.

Whether or not Mr. Munoz' business has experienced call blocking or call diversion is an issue that may be determined by the Commission in this case. Additionally, Mr. Munoz' current complaint[1] includes allegations that Nevada Sprint telephone system lacks

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[1] October of 1999. Mr. Munoz' current complaint alleges that hotel calls are only received sporadically. Tr. At 276,ll. 1-4; 410, ll.16-24; Ex. 14.

security. Those allegations were supported by compelling, credible testimony from Mr. Munoz' expert witness, Mr. Kevin Mitnick, who testified that from 1993 to February of 1995[2], he could access any dial tone in Las Vegas, intercept calls and silently monitor any telephone line within the Las Vegas area through dial-up modems[3] associated with a testing system called the Centralized Automated Loop Reporting System (CALRS)[4]. Mr. Mitnick also testified that he had access to the local telephone system through the Nortel DMS100 switch.[5]

Although vast technological changes have occurred since 1995, Sprint's witness testimony in this record about its own security practices provides this commission with little or no assurance that the Nevada Sprint telephone system is secure. Mr. Munoz,[6] Mr. Mitnick[7] and public witness Stewart Nelkin[8] also believe that Sprint's security practices jeopardize national security.

The record demonstrates how little the Nevada Sprint is telling, even in general terms, about its most basic security practices and procedures. Evidence in the record from Sprint's own witness establishes that Sprint's switch log and data retention policies have prevented Sprint from systematically analyzing intrusion attempts and system vulnerabilities. While Staff concludes that numerous factors may be contributing to Mr. Munoz' service problems, this complaint has revealed significant

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2 Tr. At 618, II.12-25. Mr, Mitnick recalled hacking Centel/Sprint "after December of '92." Id at 1.18.

3 Used by Northern Telecom, now Nortel Networks or "Nortel", to service the switches remotely.

4 Tr. At 798, II. 17-5; 799-803; 804, II. 1-3; 809, II 4-19; 811, II. 9-25; 812, II. 1-10. Ex. 43, Direct Testimony of Kevin Mitnick, Q & A 6.

5 Tr. At 804, II. 4-25; 805; 811, II. 9-25; 812, II. 1-10.Ex. 43, Direct Testimony of Kevin Mitnick, Q & A. 2,3, and 4.

6 Tr. at 426, II. 3-16. Mr. Munoz testified, "If they can do this to me, they can do this to Las Vegas." Id. At II. 5-6

7 Tr. at 612, II. 13-25; 613;614, II. 1-16. Ex. 45, p.3.

8 Tr. at 5[illegible] 5-15. Mr. Nelkin's testimony related to Sprint, Florida.

Sprint specific security issues that require prompt and thorough regulatory review.

I. Numerous Factors May Cause Mr. Munoz' Telephone Complaints

The Complainant in this case, Eddie Munoz, is the publisher of several adult advertising news rack papers[9] that promote in room entertainers, primarily in the Las Vegas area.[10] Mr. Munoz' publications advertise telephone numbers for adult entertainment businesses and individual entertainers; those advertised telephone numbers are supposed to ring to Mr. Munoz' business.

Mr. Munoz asserts that Sprint has allowed calls to his business, primarily from Las Vegas strip hotels,[11] to be diverted, blocked, or otherwise controlled or routed to competing outcall service businesses.[12] Mr. Munoz alleges that some callers to his business get false busy signals,[13] beeping sounds,[14] or dead air;[15] that calls are gone before they can be answered;[16] that phones cut off in the middle

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9 Tr. at 176, II. 5-25; 117, II. 1-4; Tr. at 189, II. 9-15: 190, II. 1-13; 192, II. 10-25; 193, II. 1-8; 194, II. 7-25; 195, II. 1-13; 195, II. 22-25; 196; 197, II. 5-25; and 261, II. 1-13.

10 Tr. at 261, II. 12.

11 Ms. Maragret Munoz, receptionist and bookkeeper, estified that on the Sprint lines calls would come in from cell phones, local and long distance home phones, but few hotel calls ere received. Tr. at 160, II. 13-20; 167, II. 6-17; 205, II. 17-25; 206, II. 1-8. During the November 2000 test, Ms. Munoz testified that for the calls she ansered, only test calls ere received from hotels. Tr. at 222, II. 15-25; 223, II. 1-4. Mr. Munoz testified that the only hotel calls received during the test were from cell, house and pay phones. Tr. at 276; 277; 278, II. 1-6. See also Ex. 15, Staff's Data request 16.

12 Tr. at 220, II. 9-25; 221, II. 21-25; 222, II. 1-12.

13 Tr. at 293, II. 13-24; 347, II. 21-25; 348, II. 1-9.

14 Tr. at 159, II. 8-11. Ex. 6, Direct Testimony of Margaret Munoz, Question and Answer 7. Tr. at 206, II. 9-21.

15 Ms. Munoz testified that the line seemed to be open but no one was there. Ex. 6, Direct Testimony of Margaret Munoz, Question and Answer 5. Tr. at 156, II. 23-25; 157; 158, II. 1-16.

16 Tr. at 178, II. 18-25; 179, II. 1-7. Ms. Munoz also testified that real time data reports from AT&T shoed "That if calls were coming in from actual hotel numbers, that they were very short, like a 5-second period of time, because on the real-time data they would do it in increments of seconds." Tr. at 161, II. 10-18.

of conversations;[17] that his business phones stop ringing for extended periods during hours that normally are his busiest hours;[18] and that during such periods not even wrong numbers are received.[19] Cross talk or hearing a conversation on a line but not being able to talk to the person was also experienced.[20] Mr. Munoz and his employees record all phone calls on "What's Happening Logs".[21] Despite changes in providers, the problems persist.[22]

Public witnesses, including a Las Vegas attorney,[23] bail bondsmen[24] and a 24 hour adult phone line business owner[25] and Mr. Munoz' witnesses, including former outcall service operators[26] and a private investigator,[27] alleged similar problems each believed to be related to call diversion or blocking on the Sprint system.

The Commission received several similar complaints in the 1990's related to the Sprint (Centel)

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17 Tr. at 159, II. 12-20.

18 Margaret Munoz testified that phone lines would go down for a couple of minutes to an hour; Ms. Munoz testified that she first observed phone lines going dead in May of 1997 and the problem continued to get worse. Tr. at 155, II. 5-25; 156, II. 1-8.

19 Tr. at 175, II 7-13.

20 Tr. at 438, II. 2-13.

21 Tr. at 151, II. 9-23; 299, II. 13-25; 300, II. 1-12. Mr. Munoz testified that all calls are counted and recorded on What's Happening Logs, including clicks, hang ups, and dead air. Id.

22 Tr. at 173, II. 21-25; 174; 175, II. 1-13. The AT&T test in one month in 1997 showed over 4,000 calls, with 677 unanswered; Mr. Munoz testified that those calls were not received. Tr. at 488, II. 18-25; 489, II. 1-18.

23 Tr. at 14-23.

24 Peter Vilencia and Johnny McDaniel, Tr. at 14-18.

25 Tr. at 589, II. 15-25; 590-598.

26 Ms. Hilda Brauer, Tr. at 59-98 and Mr. Lawrence Reubel; 102-147.

27 Mr. Heilman, Tr. 226-257.

telephone system,[28] including complaints from Ms. Brauer,[29] Mr. Reubel,[30] and Mr. Born.[31]

Mr. Munoz ordered his TI line from Sprint prior to the November 2000 testing, so that Sprint would be involved as both his local and long-distance phone company.[32] Prior to that test, Mr. Munoz had plain old telephone service ("POTS"). At the time of the hearing, Mr. Munoz' Sprint T1 line was disconnected,[33] leaving Mr. Munoz with POTS numbers.[34]

Test calls conducted to Mr. Munoz' business during selected hours on November 11, 14, and 18, 2000,[35] were received, with the exception of wrong numbers and numbers not ported correctly.[36] However, Mr. Munoz testified that during the test no calls from hotel rooms were received other than the test calls;[37] that Sprint's employees used cell phones during the test;[38] and that too many people knew about the test.[39]
Additional testing was performed by Mr. Munoz, who hired Alex Kasper and Kevin Mitnick; the Nexspace testing[40] introduced an entirely new system, lead to

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28 Tr. at 814, II. 24-25; 815, II. 1-10; 823, II. 10-25; 824; 825, II. 1-5; Tr. at 819, II. 11-22; Ex. 54. Staff received both written and telephone complaints. Tr. at 849, II. 19-25; 850, II. 1-15.

29 Tr. at 63, II. 24-25; 64-70. Mr. Heilman worked for Mr. Born. Tr. at 69, 1. 25; 70, II.1-2.

30 See Ex. 5 and Tr. at 104, II. 10-25;105-106;107, II. 1-18.

31 See Ex. 3 and Tr. at 228, II. 1-18. Mr. Heilman worked for Mr. Born and investigated the Brauer complaint, but not the Born complaint. Tr. at 228, II. 1-18.

32 Tr. at 266, II. 1-5; see also 727, II.21-25; 728, II. 1-4; 264, II. 2-4.

33 Tr. at 315, II. 17-23;263, II. 21-25; 264, 1.1.

34 Mr Collins agreed that call forwarding could be added to POTS numbers, but not the Sprint T1 line. Tr. at 745, II. 17-25; 746; 747, II. 1-2. When testifying about the "number Mr. Munozhas", Mr. Collins as referring to the T1 numbers that Mr. Munoz ordered for the Sprint testing. Id.

35 Tr. at 273, II. 6-14.

36 Tr. at 552, II. 14-25; 553-561; Ex.41;Ex. 26.

37 Tr. at 276, II. 22-24; 277, II. 5-7.

38 Mr. Collins confirmed that cell phones were used. Tr. at 736, II. 12-22.

39 Tr. at 456, II. 22-24; 462, II.9-16.

40 Tr. at 265, II. 2-25; 266; 267; 268, II. 1-9.

expected difficulties in introducing a new system and did not shed any light on Munoz complaint.[41]

Mr Mitnick's prefiled[42] and direct testimony asserted that he had complete access to all of Centel's (Sprint's) phone lines. Mr. Collins attempted unsuccessfully to minimize Mr. Mitnick's prior access to the local telephone system, stating: "...the allegations that Mr. Mitnick made were for plain old telephone service compared to Mr. Munoz' service which is a different type of service."[43] While that statement is only true for the Munoz Sprint T1 line,[44] the record contains no evidence that T1 service is more or less secure than any other service.

Mr. Munoz' refusal to maintain or update the WIN-100D, a critical part of his business infrastructure,[45] limits the primary documentation of his complaint to hand written calling logs. Staff and Mr. Munoz's prior consultant find these logs an inadequate basis to support Mr. Munoz' claims of service problems.[46] Staff would suggest that Mr. Munoz update his PBX and begin using one of the many low cost software packages available to refine his recordkeeping. This would eliminate the problem of comparing Sprint and Munoz records (the issue of time synchronization) and many sources of human error. A controlling software package would allow Mr. Munoz to quickly verify the status of all incoming lines, and provide sufficient documentation to substantiate his service complaints as to when those lines are out of service.

In order to eliminate all of the allegations made in this case, careful, simultaneous testing on both ends of the

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41 Tr. at 638, ll. 9-25; 639, ll. 1-4.

42 Ex. 14, 60 and 61.

43 Tr. at 712, ll. 2-5.

44 Mr. Collins agreed that Mr. Munoz'. Sprint T1 line was ordered, set up and serviced by Sprint Long Distance. Tr. at 714, ll. 21-25; 715, ll. 1-4. He also confirmed that the Sprint T1 line did not support call forwarding. Tr. at 717, ll. 9-17.

45 Tr. at 282, ll. 7-25; 283, ll. 1-21.

46 Ex. 40, Feb. 17, 1997, at 2, 4(c), second paragraph-end. Tr. at 542, ll. 11-25; 543, ll. 1-3.

DMS100 to Mr. Munoz link was required.[47] Records of that testing should have been kept for review by the Commission and Staff. In the absence of such testing and records, Staff concludes that numerous factors may contribute to Mr. Munoz' service complaints; while the Sprint telephone system cannot be ruled out as a contributing factor, neither can it be determined to be solely responsible.

II. Sprint's Security Procedures Require Additional Regulatory Review.

back door n. In the security of a system, a hole deliberately left in place by designers or maintainers. May be intended for use by service technicians.

security through obscurity (alt. security by obscurity) A hacker term for vendors' favorite way of coping with security holes – namely, ignoring them; documenting neither any known holes nor the underlying security algorithms; or trusting that nobody will find out about them, and that people who did find about them won't exploit them. This "strategy" never works for long.[48]

Throughout this case, Sprint steadfastly denied that its telephone system had ever been penetrated. If Sprint's telephone system has been penetrated, the Company represents that it does not know it.[49] Sprint's corporate denial was reaffirmed by Mr. Collins on June 24, 2002, immediately after Mr. Munoz' witness, Mr. Kevin Mitnick, testified to accessing the local Sprint/Centel telephone system.

While Staff does not doubt that Sprint does not know if its telephone system has been compromised or penetrated, Sprint's investigation of Staff's inquiry appears to be quite limited. In order to respond to Staff's

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47 That testing was not performed.

48 Adapted from *The New Hacker's Dictionary* (MIT Press) by permission of Eric S. Raymond

49 Tr. at 710, II. 1-20.

Data Request No. 8, Mr. Collins testified that he asked fellow Sprint employees if they were aware of system penetrations.[50] However, Sprint provided no evidence regarding what analyses ere performed.

During the hearing, Sprint provided no evidence that the company monitored its switches or took other affirmative security measures in order to determine if its telephone system was secure. Sprint could have automated downloading and analysis of all switch log data to detect intrusions, but apparently did not. Mr. Collins testified that only a portion of Sprint's switch log data as kept for less than 48 hours,[51] an insufficient time period for any analysis of prolonged or repeated intrusion attempts, assuming that Sprint performed such an analysis.

Sprint's regulatory witness[52] denied that Sprint had knowledge of any intrusion or penetration of its telephone system,[53] yet claimed that Sprint made unspecified improvements in its system security to prevent the type of access described by Mr. Mitnick.[54] Mr. Collins' testimony regarding when Sprint made security improvements was vague,[55] as were his responses to questions asking what persons or groups were responsible for new Sprint switch security procedures.[56] Mr. Collins did not know when unspecified improvements were made[57] and claimed "...it's been an ongoing process since approximately 1996,1997."[58]

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50 Tr. at 710, II. 19-25; 711, II. 1-8. *See also* Tr. at 712, II. 11-24; Ex. 49, Staff Data Request No. 8.

51 Tr. at 792, II. 13-25.

52 Mr. Collins confirmed he was not a technical witness. Tr. at 698, II. 23-25; 697, II. 1; 561, II. 13-19.

53 Ex. 49, Staff Data Request No. 8; Tr at 710, II. 6-25; 711; 712, II. 1-24. Sprint's claim does not distinguish between the type of telephone service received. Tr. at 712, II. 6-10. Mr. Collins testified that he made the claim as Sprint's representative of the investigation. Tr. at 765, II. 14-25; 766, II. 1-4. Collins also testified that his testimony had not been contradicted by "anyone within Sprint". Id.

54 Tr. at 704, II. 23-25; 705, II. 1-3.

55 Tr. at 705, II. 6-24.

56 Tr. at 706, II. 8-22.

57 Tr. at 704, II. 5-10; 704, II. 23-25; 705, II. 1-24

58 Tr. at 705, II. 21-24.

Significantly, Sprint offered no documentary evidence or technical witness who could confirm what security procedures the company had implemented to assure the Commission that the Nevada Sprint system presently is secure.[59] Similarly, Sprint presented no technical witness who was knowledgeable about either the Munoz complaint or Sprint's present telephone system security practices.

Sprint also failed to establish what security procedures are in place to protect its telephone system from the types of intrusions alleged by Mr, Munoz[60] and testified to by Mr. Mitnick; Sprint offered no evidence that it could currently prevent the ready access Mr. Mitnick detailed through either the DMS100 switch or the CALRS system.

Sprint's witness, Mr. Scott Collins, confirmed a lack of Sprint employee "social engineering"[61] security training.[62] He discounted Mr. Mitnick's testimony, saying "He just don't (sic) call up and ask for it. He conned his way in as either posing as a fellow Sprint employee or Nortel technician".[63] However, calling up and asking for information is precisely what social engineering entails.

Mr. Collins also testified that Sprint's telephone switch logs were maintained for approximately a two-day period.[64] While Sprint now might be retaining switch log

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59 Sprint could have provided a technical witness regarding any of its security practices that would present the types of access alleged by Mr. Munoz and testified to by Mr. Mitnick. It did not do so. Sprint's security testimony and any documents claimed to be confidential could have been filed under seal with the Commission and a closed hearing held. Sprint elected not to do so.

60 Tr. at 814, II. 8-12. Mr. Hackman offered no opinion as to whether any of Mr. Munoz's calls are being blocked or diverted.

61 Mr. Mitnick further defined social engineering. See Tr. at 602, II. 16-25; 603, II. 1-3.

62 Tr. at 707, II. 9-11; 708, II. 10-25; 709, II. 1-17. Mr. Collins testified that Sprint's employees are trained to protect customer propriety information. Tr. at 707, II. 12-18.

63 Tr. at 709, II. 6-10.

64 Tr. at 719, II. 12-25; 720, II. 1-14. Ex. 51, Staff's Data Request 32 requested that Sprint provide "... copies of any and all logs kept for switch access obtained via interanal modem lines for the last seven years." None were provided by Sprint. Id. at 720, II. 12-21.

data for a longer period,[65] Mr. Collins did not know if in fact Sprint reviewed switch logs for intrusion attempts.[66] Mr. Collins also informed Commission Policy Advisor Mr. Bolle that he did not know whether or not Sprint downloaded data from the switch logs:

Q. With respect to the dial-up access log, is it my understanding that that log is kept for 48 hours; id that right?

A. It's my understanding that a log for dial-up access into the switch is kept for 48 hours, or there's a certain amount of data I believe that's held and then it's rewritten. And I believe it approximates the 48 hours.

Q. What happens to that report in that 48 hours, do you know?

A. I believe we are – and I'm not sure, but I believe we now maintain that in a database somewhere. I don't know if that was always the policy.[67]

The limited data Sprint briefly kept may not have been retained solely or primarily for security purposes. Sprint may have maintained dial-up[68] data solely for billing purposes. While Sprint's response to Staff Data Request 32, Exhibit 51, states that only dial-up or remote access activity was kept for "approximately two days", it is unclear what, if anything, Sprint did with the data it briefly retained.

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65 Mr. Collins testified that switch logs are "...kept for a cerain amount of time." Tr. at 766, ll. 11-19.

66 Id.

67 Tr. at 792, ll. 13-25. Emphasis added. Since he responded to Staff's Data Request 32 and 38, Ex. 51, Mr. Collins did know that as of November 30, 2001, switch log dial-up or remote access data was not retained for more than two days. Mr. Collins represented in response to Staff's Data Request 32 that "Logs showing dial-up or remote access activity into Sprint's Las Vegas switches are kept for approximately two days. Sprint is therefore unable to provide these logs for the past seven years."

68 Newton's Telecom Dictionary, 17th edition, defines "Dial Up": "the use of a dial or push button telephone to create a telephone or data call. Dial up calls are usually billed by time of day, duration of call and distance traveled. A connection to the Internet, or any network, where a modem and a standard telephone are use to make a connection between computers. See Dial Up Line."

Assuming, *arguendo*, that Sprint's employees promptly reviewed this limited switch log data for security purposes before it was overwritten, Sprint nevertheless did not retain switch data by which it might identify a pattern of attempted system intrusions through its switches. If Sprint automatically downloaded data for analysis and retention, Sprint could answer critical questions, including when a system intrusion took place, thereby identifying the period of exposure; how access was gained; what information was compromised; and how similar access could be prevented.

While several questions still exist concerning Mr. Munoz' business practices and customer premises equipment ("CPE"), Sprint's business practices and its response to this complaint fail to provide evidence that the Sprint of Nevada's telephone system is presently secure.

Sprint did not maintain or produce copies of its investigative files or reports for Mr. Munoz' complaints or similar complaints of call blocking or call diversion investigated by Mr. Hill and Mr. Poole.[69] Mr. Collins testified that Sprint's record retention policies varied by department.[70] Investigative records or reports related to the Munoz investigation were either not produced[71] or were destroyed in a re-organization.[72] Absent written reports, Mr. Collins agreed that Sprint would have to rely on its employees' institutional knowledge and involvement in the test or investigation.[73] However, the Sprint employee produced as a witness in this case who investigated complaints could not specifically recall working on the Munoz complaint.[74]

Sprint's failure to produce a technical witness familiar with Sprint's current security practices and policies gives Staff no comfort that Sprint has in place

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69 Tr. at 385, ll. 8-14; Tr. at 752, ll. 5-25; 753; 754, ll. 1-7.

70 Tr. at 754, ll. 8-25; 755, ll. 1-24.

71 Tr. at 752, ll. 17-25; 753, ll. 1-3.

72 Tr. at 753, ll. 23-25; 754, ll. 1-7.

73 Tr. at 753, ll. 17-22.

74 Tr. at 383, ll. 14-16. Mr. Hill also testified that he maintained personal investigation records but did not know where the records went after he left Sprint. Tr. at 385, ll. 8-14.

either adequate security protocols or sufficient employee security training. Whether or not the Commission determines that Mr. Munoz' business calls were subject to call diversion or call blocking, based on the record and evidence in this case, the Commission should find that an unreasonable opportunity for call diversion or call blocking exists on the Sprint Nevada system.

Accordingly, the Commission should enter an Order that adopts Staff's recommendations[75] and requires Sprint to retain outside consultants to conduct a Staff monitored internal Sprint security review. The Commission should also establish subsequent security reporting requirements to ensure that Sprint will create and maintain adequate security protections and investigative records retention policies. Sprint also should demonstrate that its employees are trained to follow Sprint's security practices and records retention policies. Local Sprint employees, Sprint corporate, and any other Sprint employees who have any shared responsibility for the security of the Nevada Sprint telephone system should be included in Sprint's security training.

III. Security of Telephone Service Is Jurisdictional to the Commission

Mr. Munoz presents this Commission with a critical issue: Is the telephone service provided by Sprint in its Nevada service territory secure? The answer to that question could impact economic, social, and national matters of importance to all Nevadans and to anyone conducting business in Nevada. Mr. Munoz asserts that Sprint has not adequately protected its customers from security breaches that have occurred and has not done adequate and proper testing of Sprint's telephone system.[76]

Moreover, Sprint clearly was aware of customer complaints alleging diverted or blocked calls from the 1990's to date. Sprint also knew of alleged access through CALRS at least since the time Mr. Mitnick filed testimony

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[75] Ex. 7, Direct Testimony of Ron Bardarson, at 10, ll. 16-21.

[76] Ex. 60, 4A.

in this case. If Mr. Mitnick's testimony related to the asserted password seed list[77] is correct,[78] Sprint may have failed to timely change Nortel's pre-programmed passwords to protect Sprint's telephone system. Moreover, Sprint provided no evidence to establish when or if the Nortel passwords had been changed, or if such asserted access was no longer possible.

Based on Staff's investigation and evidence in the case, Staff recommends that Sprint review its security procedures throughout its Nevada telephone system. Staff also asks the Commission to order Sprint to retain telephone security consultants to advise the Company of additional security measures that may be warranted; to prevent or deter access to Sprint's Nevada telephone system, including telephone switches; to train its employees to detect and deter intrusion attempts; to automate an iterative process to precisely identify and contain telephone system intrusions; and to document ad record its Nevada security investigations.

Staff's security recommendations are timely.[79] Adequate telecommunication security is an ongoing, ordinary part of doing business. The security of a telephone call is directly related to the service rendered by Sprint in accordance with tariffs filed with and approved by the Commission.[80] Similarly, the quality of service

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77 Ex. 52.

78 Tr. at 798, II. 17-25; 799; Ex. 43.

79 The Federal Energy Regualtory Commission (FERC) and North American Electric Reliability Council (NERC) recently identified a set of "Minimum Dailily Security Requirements" to be included in the Notice of Proposed Rulemaking for Security Standards for the Electricity Sector, july 19, 2002. The Primary Focus is on Cyber Security, including physical security of cyber assets.

80 NRS 703.150 gives the Commission the authority to supervise and regulate the operation and mainteneacnce of public utilities in this state; NRS 704.120 gives the Commission the authority to substitute such rates, regulations, practices, or service after investigation and hearing as is just and reasonable.

rendered by Sprint is clearly within this Commission's jurisdiction.[81]

CONCLUSION

Mr. Hackman described his levels of faith in Sprint's investigation as being "somewhat like a roller-coaster ride"; he had less faith in the thoroughness of the Company's investigations that were done in the mid-1990's, but more faith in the thoroughness of the Company's investigation and level of attention given to the case in the last two to three years.[82] Mr. Hackman stated that:

> "I believe that Mr. Munoz is experiencing the problems that he described. I just have not seen enough compelling evidence to conclude that Sprint is the cause of it".[83]

Mr. Bardarson's review of the complaint and the record in this case discloses a variety of potential causes of Mr. Munoz' telephone problems. The Munoz and Sprint ends of the calling chain, as well as the transmission portion of the call are suspect.

Staff therefore recommends that the Munoz complaint be dismissed and that the Commission order Sprint to retain outside consultants to conduct a comprehensive security review of Sprint's Nevada operations. Staff respectfully requests that the Commission enter and Order that:

1. Dismisses the Munoz complaint and adopts Staff's recommendations[84] and

2. Orders that a new Commission investigagoy docket be opened immediately to investigate Sprint's Nevada security, security practices, and employee security training and

3. Requires:

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81 NRS 704.001.

82 Tr. at 847, ll. 11-24.

83 Tr. at 855, ll. 14-17. *Also see* Ex. 53, the Direct Testimony of Rick Hackman.

84 Ex. 7, Direct Testimony of Ron Bardarson, at 10, ll. 16-21.

a. Sprint and its corporate security representatives to meet with Staff within 15 days of an Interim or Final Commission Opinion and Order in Docket No. 00-6057 and subsequently, when Sprint's consultants have been retained, to coöperatively develop and implement a schedule for a comprehensive Sprint Nevada security review conducted by consultants for Sprint and monitored by Staff, and

b. Sprint to utilize consultants to modify Sprint's local and corporate security practices and procedures related to its Nevada operations:

1) to maintain and protect Sprint's Nevada confidential corporate information;

2) to prevent or deter access to Sprint's Nevada telephone system, including its Nevada telephone switches;

3) to developed and automate systems to identify attempted Nevada telephone system intrusions;

4) to develop ad implement mandatory employee reports, logs and records retention policies for documentation of its Nevada security investigations and

5) to develop and conduct a Nevada Sprint employee security training program, monitored by Staff, including training in specific techniques to better maintain confidential corporate information; methods to prevent or deter access to Sprint's electronic systems; and procedures to encourage employee recognition, identification and reporting of social engineering or "con" attempts and

6) to conduct active testing to ensure that any adopted changes are implemented and effective.

4. Require Sprint, in consultation with its consultants, and Staff to propose to the Commission an issue specific investigatory schedule, including time frames for completion, periodic reporting requirements and Commission hearings, including time frames for

completion, periodic reporting requirements and Commission hearings, including closed hearings, and

5. Specifies that any information related to the Munoz complaint that may be discovered in a subsequent investigatory docket be filed with the Commission and be provided to counsel for Mr. Munoz and Staff; if any such information relates to a Sprint security practice currently used with Sprint, such filing may be made under seal with the Commission and provided by Protective Agreement to counsel for Mr. Munoz and Staff, the parties to Docket No. 00-6057.

RESPECTFULLY SUBMITTED this 16th day of August 2002.

PUBLIC UTILITIES
COMMISSION OF NEVADA
REGULATORY OPERATIONS
STAFF.

By: (s)
Louise Uttinger,
Assistant Staff Counsel

APPENDIX B

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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Eddie Munoz vs. Central Telephone Company Of Nevada, d/b/a Sprint of Nevada. Complaint Alleging incoming calls are being blocked or Diverted from customer's business.

_____/

Docket No. 00-6057

_____/

REGULATORY OPERATIONS STAFF'S MOTION TO DESIGNATE CONFIDENTIAL INFORMATION AND MOTION TO ISSUE PROTECTIVE ORDER

COMES NOW, the Regulatory Operations Staff ("Staff") of the Public Utilities Cmmission of Nevada ("Commission") and, pursuant to Nevada Administrative Code ("NAC") 703.550, hereby submits its Motion to Designate Confidential Information and Motion to Issue Protective Order in the above-captioned docket. Staff's Motions are necessitated by a careful review of certain records filed in the open record in this case, including personal telephone numbers of customer who may have unlisted or non-published number or other reasonable expectations of privacy.

I. POINTS AND AUTHORITIES

NRS 703.190 (2) mandates that the Commission prohibit the disclosure of trade secret or confidential

commercial information pursuant to NRS 49.325 or NRS 600A.070 or Rule 26 (c)(7) of the Nevada Rules of Civil Procedure ("NRCP"). Nevada Rules of Civil Procedure 26 (c)(7) allows the issuance of protective orders, for good cause shown, for trade secrets and other confidential commercial information; additionally NRCP 26(c)(8) allows protective orders to require that certain information be filed under seal, to be opened as directed by the court.

> ...[T]he court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:....NRCP 26(c).

Pursuant to NRCP 26(c), Staff's Motions seek to protect specific individual names and telephone numbers from being placed in the public record I this proceeding. Staff requests that the period during which the information must not be disclosed publicly by indefinite, until such time that all appeals in the case have been completed. At the conclusion of all appeals of any orders in this case, Staff requests that the Protective Orderspecify that such materials that exist in the Commission and Staff files be destroyed.

Chapter 703 of the Nevada Administrative Code sets forth the rules of practice and procedure before the Commission. Sections 703.527 through 703.5282, entitled "Confidentiality of Information", resulted from the regulations adopted in Docket No. 95-1016. These sections address the procedures for handling information deemed confidential or obtained under a protective agreement.

If granted, Staff's Motions would allow redacted volumes of information to be utilized at hearing, and would designate as confidential the Commission's copies of volumes of information currently available in the public record. To the extent that any injury is required into such designated confidential information during the course of the hearing, the Presiding Officer may close the hearing

and restrict persons present to counsel and their parties, excluding all others from the hearing room.

Due to the fact that the confidential information is interspersed throughout voluminous information, Staff provides one redacted set of materials to the Commission; Staff further represents that it previously provided one propesed redacted set to counsel for each party to the case. Staff, therefore, requests waiver of NAC 703.5274(1)(b), which would require 10 copies of the document which redacts the confidential information for which the confidential treatment is requested.

Attached to this filing are redacted copies of Volumes 1, 2 and 3 filed with the Commission on March 7, 2001.

RESPECTFULLY SUBMITTED this 31st day of October 2001.

PUBLIC UTILITIES COMMISSION OF NEVADA REGULATORY OPERATIONS STAFF

By: (s) _____

Louise Uttinger, Assistant Staff Counsel

APPENDIX C

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

EDDIE MUNOZ vs. CENTRAL TELEPHONE COMPANY- NEVADA, d/b/a SPRINT OF NEVADA. Complaint alleging incoming calls are being blocked or Diverted from customer's business.

_____/

Docket No. 00-6057

_____/

INTERIM ORDER DENYING MOTION FOR PROTECTIVE ORDER AND DENYING MOTION TO COMPEL

The Presiding Officer in this docket makes the following findings of fact and conclusions of law:

1. A Complaint, designated as Docket No. 00-6057, has been filed with the Public Utilities Commission of Nevada ("Commission") by Eddie Munoz ("Complainant") against Central Telephone Company-Nevada, d/b/a Sprint of Nevada ("Sprint") in which Complainant alleged that incoming calls to his business in Las Vegas, Nevada, were either being blocked or diverted to another source within the Sprint network. Complainant requested an investigation and public hearing into the matter. On February 22, 2001, the Commission voted to set this matter for investigation and hearing.

2. This Complaint as filed pursuant to Chapters 703 and 704 of the Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC") and including but not limited to NRS 703.310.

3. The Commission issued a public notice of this Complaint in accordance with State law and the Commission's rules of Practice and Procedure.

4. On April 30, 2001, the Commission held a duly noticed prehearing conference regarding these matters.

5. On March 6, 2002, the Complaint filed a Motion for Protective Order ("Motion"). The Complaint asserted that the Motion is necessitated by the fact that two officers with the Las Vegas Metropolitan Police Department ("Metro") have agreed to discuss an ongoing investigation regarding call diversion which may be relevant to the instant case. The Complainant stated that the officers will comment during the public comments portion of the hearing scheduled for March 14, 2002, but only if such comments can be made in a closed session.

6. On March 8, 2002, Sprint filed its Opposition to the Motion ("Opposition").Sprint argued *inter alia* that the Motion is an attempt to introduce surprise testimony, which violates Sprint's Due Process rights to prepare for hearing.

7. On March 11, 2002, Complainant filed his Reply to Sprint's Opposition. The Complainant stated that Sprint "apparently misconstrued" the Motion.[1] The Complainant asserted that "it is Metro that is seeking an opportunity to share any relevant information with the Commission and not (Complainant) seeking to offer additional testimony."[2] The Complainant further stated that the comments are "not intended to be a question and answer session, but rather input which the public is entitled to have into a particular docket with the proviso that it be in a closed session...."[3] Also on March 11, 2002, Staff filed its Response to the Motion. Staff did not oppose the Motion to allow Metro to provide either testimony or comments in a closed session. Staff, however, requested several conditions that it would like to

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[1] Reply to Sprint's Opposition to Motion for Protective Order at pg. 1

[2] *Id.*

[3] *Id.*

see present in the commission interim order granting the Motion.[4]

8. On March 13, 2002, Complainant filed a Motion to Compel Witnesses ("Motion to Compel"). The Complainant asserted that the Motion to Compel is necessary because the Metro officers cannot attend the hearing without a subpoena or a Commission order compelling them to appear.

9. On March 14, 2002, the Clark County District Attorney ("DA") filed a letter on behalf of Metro indicating its opposition to any order directing Metro representatives to testify regarding a confidential law enforcement investigation.

10. NAC 703.700 provides that "the presiding officer shall, upon... his own initiative... quash... the order "granting a motion for order to compel witnesses "if it is determined to be unreasonable or oppressive."

11. The Presiding Officer finds that if an order were issued granting to Motion to Compel, the order would be unreasonable in violation of NAC 703.700. Furthermore, to close a hearing during the public comment period of the hearing would violate the spirit, if not the letter, of the Open Meeting Law, NRS Chapter 241.

12. The Presiding Officer finds that Complainant's attorney has no standing to represent Metro, and thus does not have the capacity to request a Motion for Protective Order on Metro's behalf, a fact implicit in the filing of the Motion to Compel.

13. The Presiding Officer finds that the DA does have standing to represent Metro. The letter filed by the DA on March 14, 2002, stated that Metro Regulation 4/108.07 prohibits members from voluntarily testifying in civil actions, or testifying without being under subpoena. The letter further stated that Metro would move to quash any subpoena which was issued.

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[4] Regulatory Operations Staff's Response to Munoz Motion for Protective Order at pg. 2.

14. Therefore, the Presiding Officer finds good cause to deny the Motion for Protective Order and the Motion to Compel.

15. Pursuant to NAC 703.690, the Presiding Officer may issue appropriate interim orders.

THEREFORE, it is ORDERED that:

1. The Motion for Protective Order filed in Docket No. 00-6057 is DENIED.

2. The Motion to Compel filed in Docket No. 00-6057 is DENIED.

3. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of the Order.

By the Commission,

(s)

ADRIANA ESCOBAR CHANOS, Commissioner and Presiding Officer

Attest: (s)

CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL) 4-1-02

APPENDIX D

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

EDDIE MUNOZ V. CENTRAL TELEPHONE COMPANY-NEVADA, d/b/a SPRINT OF NEVADA. Complaint alleging incoming calls are being blocked or diverted from customer's business.

Docket No. 00-6057

At a general session of the Public Utilities Commission of Nevada, held at its offices on September 12, 2002.

PRESENT: Chairman Donald L. Soderberg
Commissioner Richard M. McIntyre
Commissioner Adriana Escobar Chanos
Commission Secretary Crystal Jackson

ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

1. A complaint, designated as Docket No. 00-6057, was filed with the Commission by Eddie Munoz ("Complainant") against Central Telephone Company-Nevada d/b/a Sprint of Nevada ("Sprint") in which Complainant alleged that incoming calls to his business in Las Vegas, Nevada ere either being blocked or diverted to another source within the Sprint network. Complainant requested an investigation and public hearing into the

matter. On February 22, 2001, the Commission voted to set this matter for investigation and hearing.

2. This complaint was filed pursuant to Chapters 703 and 704 of the Nevada Revised Statutes ("NRS") and Nevada Administrative Code and, in particular, NRS 703.310.

3. The Commission issued a public notice of this complaint in accordance with State law and the commission's rules of Practice and Procedure.

4. The Regulatory operations Staff of the Commission participated as a matter of right. The petitions for leave to intervene filed by Hilda Brauer, Larry Duke Reubel, Nicole Hamrah, and Stephanie Mouton were denied. Members of the public were given an opportunity to comment at the commencement of the hearing and at other times during the process as well.

5. On April 30, 2001, the Commission held a duly noticed prehearing conference regarding these matters.

6. On May 2, 2001, a Notice of Hearing was issued, establishing September 24, 2001 as the hearing date.

7. A Procedural Order was issued on May 15, 2001, establishing a procedural schedule in Docket No. 00-6057.

8. On July 26, 2001, Procedural Order No. 2 was issued. Also on July 26, 2001, the Presiding Officer issued an Order Granting Complainant's Motion to Extend Discovery and Continue the Hearing Date as well as an Order Denying a Countermotion filed by Sprint.

9. On December 24, 2001, an Order was issued Granting Staff's Motion to Designate Confidential Information and Motion to Issue Protective Order

10. On February 12, 2002, Procedural Order No. 3 was issued.

11. On March 7, 2002, an Order was issued Granting a Motion for Expedited Ruling and Denying All Other Pending Motions.

12. On March 14, 2002, a duly-noticed hearing was commenced.

COMMISSION DISCUSSION

13. The Commission addressed two issues during this proceeding. The issues are (1) whether call diversion and/or call blockage caused by Sprint has occurred and (2) whether Sprint has taken the necessary precautions to insure the security of its network.

14. As to the first issue of call diversion and/or call blockage, the record does not present evidence that Sprint has caused either to occur. In fact, Complainant's witness Kevin Mitnick testified that neither Nexspace nor himself could find any case where they could recreate the situation where a call was diverted to a competitor. (TRS Pg. 629; lines 17 through 22). Mr. Mitnick also testified that it was his opinion that further testing needs to be done. (TRS Pg. 657, lines 12 through 23). Mr. Mitnick further testified that he does not know if Mr. Munoz's calls are being blocked or diverted. (TRS Pg. 658, lines 15 through 24). Further, the record presents evidence that other causes may be responsible for Complainant's problems. These possible causes include but are not limited to the following: (1) Diversion and/or blockage of telephone calls at private hotel PBX systems (TRSPg. 641 lines 8 through 15), (TRS Pg. 854 lines 17 through 21); and (2) Complainants own equipment failure (Exhibit 31 Pg. 08359, para. C(4)(d)), (Exhibit 7 Pg. 5 lines 18 through 19), and (TRS Pg. 861 lines 8 through 10). These possible causes are not the responsibility of Sprint.

15. The Complainant must present sufficient evidence to support his allegations against Sprint. In this instance, the Complainant has not presented substantial evidence that call diversion and/or call blockage as caused by Sprint. Therefore, the Commission finds that the complaint alleging call diversion and/or call blockage should be dismissed.

16. As to the second issue, the record does not present sufficient evidence that Sprint has failed to take the necessary precautions to insure the security of its network.

17. Mr. Mitnick testified that any system that is controlled by computer systems is essentially

vulnerable. (TRS Pg. 613 lines 4 through 6). Mr. Mitnick also testified that he has compromised the networks of every telephone company in all the areas he was living while avoiding the government. (TRS Pg. 619 lines 12 through 21).

18. In fact, the record supports that Sprint has taken reasonable steps to protect its network. (TRS Pg. 651 lies 3 through 6), (Exhibit 7 Pg. 3 line 29), and (Exhibit 18 Pg. 7 lines 23 through 24). The record further supports that Sprint's network security is no better nor no worse than that of other telephone companies.

19. Again, the Commission expects the complainant to put forth sufficient evidence to support the complaint. The Commission does not find substantial evidence oj the record to support the complaint that Sprint has not taken reasonable steps to protect the security of its network. Therefore, the Commission finds that it should dismiss the complaint.

THEREFORE, it is ORDERED that:

1. The complaint filed by Eddie Munoz in Docket no. 00-6057 is dismissed.

2. All arguments of the parties raised in the proceedings, including but not limited to arguments raised in the hearing, not expressly considered herein have been considered and either rejected or found to be non-essential further support for this Order.

3. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order.

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By the Commission,

/s/
DONALD L. SODERBERG, Chairman

/s/
RICHARD M. MCINTIRE, Commissioner

/s/
ADRIANA ESCOBAR CHANOS,
Commissioner and Presiding Officer

Attest: /s/
CRYSTAL JACKSON, Commission Secretary
Dated: Carson City, Nevada
(SEAL) 9/23/02

APPENDIX E

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Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDDIE PAUL MUNOZ,
Plaintiff,
vs.
CENTRAL TELEPHONE CO. NEVADA
d/b/a SPRINT OF NEVADA,
Defendant.
_____/
Case No. CV-S-04-1212-RCJ-RJJ

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE
_____/

On January 24, 2005, this court heard oral argument on a Motion to Dismiss filed by Defendant Central Telephone Company – Nevada dba Sprint of Nevada ("Sprint") in the above-entitled action. Plaintiff Eddie Paul Munoz ("Mr. Munoz") appeared in proper person. Patrick J. Reilly, Esq.

of the law firm of Hale Lane Peek Dennison and Howard appeared on behalf of Sprint. After carefully considering the arguments and briefs of the parties, this Court hereby GRANTS Sprint's Motion to Dismiss.

I.
MUNOZ'S ALLEGATIONS[1]

1. Mr. Munoz operates an adult entertainment business located in Las Vegas, Nevada.

2. In his complaint, Mr. Munoz alleges that his local telephone lines are not secure and this alleged lack of security has caused his adult oriented business to lose money. Specifically, Mr. Munoz claims that unknown third parties have diverted incoming telephone calls away from his business to competitors or blocked them altogether.

3. Mr. Munoz admits in his complaint that these same issues were tried before the Nevada Public Utilities Commission (the "Commission"), in Docket No. 00-6057, and his Complaint makes numerous references to that administrative proceeding.

4. In that Commission proceeding, Mr. Munoz was represented by counsel of his own choosing and received a full and extended evidentiary hearing on the merits of his allegations and claims.

5. On September 23, 2002, the Commission issued an order dismissing Mr. Munoz's Complaint. Complaint, Exhibit B; Motion to Dismiss; Exhibit A. In that Order, the Commission made a number of findings of fact, including the following:

a. The record did not present any evidence that Sprint had caused call diversion and/or call blocking to occur (¶ 14);

b. Mr. Munoz's expert witness, Kevin Mitnick, was never able to recreate a situation where a telephone call was diverted to a competitor (¶ 14);

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[1] Pursuant to Fed. R. Civ. P. 12(b)(6), this Court accepts as true the well pleaded allegations of the Complaint for the purposes of this Motion to Dismiss only.

c. Mr. Munoz's witness Kevin Mitnick testified that he did not know if Mr. Munoz's calls were being blocked or diverted (¶ 14);

d. Evidence was offered or other possible causes for Mr. Munoz's claimed problems, none of which were attributable to Sprint (¶ 14);

e. Mr. Munoz failed to present substantial evidence that call blocking and/or call diversion was being caused by Sprint (¶ 15);

f. Mr. Munoz failed to present sufficient evidence that Sprint "had failed to take the necessary precautions to insure the security of its network" (¶ 16); and

g. Sprint has "taken reasonable steps to protect its network" and its network security "is no better or worse than that of other telephone companies" (¶ 18).

6. Mr. Munoz concedes that he never sought judicial review of the Commission Order, and thus never appealed the Commission's findings and conclusions, despite the fact that N.R.S. § 233B.130(2)(c) requires a party to seek judicial review "within 30 days after service of the final decision of the agency."

II.
LEGAL ARGUMENT

A. Standard of Review on Motion to Dismiss.

Pursuant to the Federal Rules of Civil Procedure, a defending party may move for the dismissal of a complaint on the grounds that the pleading fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). Such a motion may be directed at all or less than all of the claims raised. Hon. William W. Schwarzer, et al., ***Federal Civil Procedure Before Trial*** § 9:189 (2000). A Rule 12(b)(6) motion must be granted if "it appears to a certainty that {Plaintiffs} would be entitled to no relief under any state of facts which could be proved." ***NL Indus.,Inc. v. Kaplan***, 792 F.2d 896, 898 (9th

Cir. 1986). For the purposes of a Rule 12(b)(6) motion, that claimant's allegations are generally assumed to be true and viewed in the light most favorable to the claimant. ***Id.*** However, the court need not accept as true conclusory allegations of law made in the complaint, nor must it accept unreasonable inferences or unwarranted deductions of fact. Schwarzer at § 9:221 (2000), ***citing In re Delorean Motor Co.,*** 991 F.2d 1236, 1240 (6th Cir. 1993). Material property submitted with a complaint, such as a attached exhibit, may be considered as part of the complaint for the purposes of a Rule 12(b)(6) motion. ***Hal Roach Studios v. Richard Feiner & Co.,*** 896 F.2d 1542, 1555 (9th Cir. 1990).

B. Mr. Munoz's Claims Are Barred by the Doctrine Res Judicata.

"The doctrine of *res judicata* provides that a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." Headwaters inc. v. U.S. Forest Serv., 382 F. 3d 1025, 1028 (9th Cir. 2004) (citation and quotation marks omitted). Federal courts give a state judgment the same preclusive effect it would have in state court. ***Coeur D'Alene Tribe of Idaho v. Hammond***, 384 F.3d 674, 688 (9th Cir. 2004). Under Nevada law, the elements of res judicata are (1) an identity of claims in both actions, (2) a final judgment on the merits, and (3) the party against whom res judicata is asserted must have been party to the prior action, or in privity with a party to the prior action. ***Executive Management, Ltd. V. Ticor Title Ins. Co.,*** 114 Nev. 823, 835-36,963 P.2d 465, 473 (1998); ***see also Ayala v. Caesars Palace***, 119 Nev. 29, ___n.6, 71 P.3d 490, 492 n.6 (2003). If a plaintiff brings suit and fails to recover, he is barred from recovering on "all grounds of recovery that were asserted in [the prior] suit, ***as well as those that could have been asserted." University of Nevada v. Tarkanian***, 110 Nev. 581, 600, 879 P.2d 1180, 1192 (1994) (emphasis added).

Mr. Munoz makes the same allegations that he raised before The Commission – that Sprint damaged his business his business operations by failing to

provide an adequately secure telephone network. His first two claims for relief unabashedly request that this Court overturn the Commission Order. In fact, the Complaint repeatedly quotes from Regulatory Operations Staff's brief to the Commission[2], seeking to re-litigate the facts tried before the Commission in federal court.

An administrative agency's quasi-judicial decision is entitled to preclusive effect once it has become final an is o longer open to appeal. ***Int'l B'hood of Elec. Workers, Local 532 v. Brink Const. Co.*** 825 F.2d 207, 213 n.10 (9th Cir. 1987). Under N.R.S. § 233B.130(2), the time for Mr. Munoz to file a petition for judicial review of the final Commission Order dismissing his complaint was thirty (30) days, which has now long passed. Mr. Munoz was a party to the Commission proceedings, was represented by counsel, and received a full evidentiary hearing on the merits of his claims. Accordingly, Mr. Munoz's claims must be dismissed with prejudice on res judicata grounds.

C. 47 U.S.C. § 258 Does Not Create a Private Right of Action on Behalf of a Subscriber.

Mr. Munoz's third claim for relief is alleged under 47 U.S.C. §258 (a). This statute deals with illegal changes to "a subscriber's selection of a provider of telephone exchange service," and has nothing to do with the factual allegations set forth in the Complaint. Regardless, this claim must be dismissed because Section 258 is an inter-carrier statute, and thus creates a private right of action on behalf of "the carrier previously selected by the subscriber" only. 47 U.S.C. § 258(b). Section 258 (a) does not create a private right of action by a telephone subscriber against its carrier.

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[2] Although the Complaint refers to this Staff's brief as an order by the Commission, it is not. Regulatory Operations Staff participates in contested cases before the Commission as "an independent party" and does not have the power to issue orders. N.R.S. § 703.301 (1). As a result, the legal briefs of Regulatory Operations Staff have no legal force or effect. They are simply legal briefs of a party to the proceeding. Significantly, though, Mr. Munoz does not dispute that even that Regulatory Operations Staff recommended that Mr. Munoz's administrative complaint be dismissed.

In support of his opposition, Mr. Munoz relies on several decisions defining the jurisdiction of state regulatory commissions under the Telecommunications Act of 1996 to arbitrate and enforce interconnection agreements between incumbent local exchange carriers (the established telephone companies in 1996) and competitive local exchange carriers (the new telephone carriers competing with established companies) under 47 U.S.C. §252. ***See Pacific Bell v. Pac West Telecomm, Inc.*** 325 F.3d 1114(9th Cir. 2003); **U.S. West *Communications, Inc. v. Sprint Communications Co., L.P.***, 275 F.3d 1241, (10th Cir. 2002); ***Southwestern Bell Tel. Co. v. Connect Communications Corp***., 225 F.3d 942 (8th Cir. 2000); ***Iowa Utilities Bd. v. F.C.C.,*** 120 F3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub. nom. AT & T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999). This argument is without merit. Mr., Munoz is not a local exchange carrier. Because Mr. Munoz's claims involves a consumer complaint against a public utility, and not an interconnection agreement among public utilities, these cases are inapplicable to this case. Therefore, this claim must fail.

D. Munoz's Fourth Claim for Relief Does Not Allege that Sprint Acted Under Color of State Law.

Mr. Munoz's fourth claim for relief must additionally be dismissed because he does not allege that Sprint acted under color of state law. '42 U.S.C. § 1983 creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights." ***Squaw Valley Development Co. v. Goldberg***, 375 F.3d 936, 943 (9th Cir. 2004) (citation and quotation marks omitted). Sprint is private business entity, and even though its business is subject to 'extensive regulation" by the state, it does not act under color of state law. Scott v. Eversole Mortuary, 522 F.2d 1110, 1115 (9th Cir. 1975). Therefore, this cause of action fails as a matter of law and is without merit.

III.

CONCLUSION

Count I and Count II of Mr. Munoz's complaint are barred by the doctrine of res judicata. Count III must be dismissed because Mr. Munoz does not possess a private right of action under 47 U.S.C. §258. Count IV, which asserts that Sprint violated Mr. Munoz's constitutional rights under 42 U.S.C. §1983, fails as a matter of law because there is no allegation that Sprint acted under the color of state law. Accordingly, this Court hereby dismisses the above-entitled action with prejudice. Because the forgoing issues fully adjudicate Mr. Munoz's claims, this Court need not consider Sprint's remaining arguments in support of dismissal.

IT IS SO ORDERED.

(s) _____

UNITED STATES DISTRICT JUDGE

DATED: FEBRUARY 8, 2005

Submitted by

(s) _____

Patrick J. Reilly, Esq.
Thomas R. Ryan, Esq.
Hale Lane Peek Dennison and Howard
2300 West Sahara Avenue, 8th Floor, Box 8
Las Vegas, Nevada 89102

Attorneys for Defendant

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EDDIE PAUL MUNOZ, Plaintiff- Appellant, v. CENTRAL TELEPHONE COMPANY- NEVADA; et al., Defendants - Appellees.	No. 05-15295 D.C. No. CV-04-01212-RCJ District of Nevada, Las Vegas ORDER

Appellees' motion to strike, any response to the motion and any related filings shall be referred to the merits panel for resolution.

For the Court:
Cathy A. Catterson, Clerk
(s)
Cole Benson, Deputy Clerk
9th Cir. R. 27-7/Note to Rule 27-7/
Rule 27-10

pro 8.1.05

APPENDIX G

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDIE PAUL MUNOZ,
Plaintiff – Appellant,
v.
CENTRAL TELEPHONE COMPANY NEVADA; et al.,
Defendants – Appellees.

No. 05-15295
D.C. No. CV-04-01212-RCJ
MEMORANDUM*

Appeal from the United States District Court
For the District of Nevada
Robert C. Jones, District Judge, Presiding
Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Eddie Paul Munoz appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging Central telephone Company – Nevada ("Sprint") failed to maintain a secure telephone network, resulting in the loss of some calls to his business. We have jurisdiction under 28 U.S.C. § 1291. We review de nova a district court's judgment based upon res judicata. See Headwater Inc. v. United States Forest Serv., 399 F. 3d 1047, 1051 (9th Cir.2005). We affirm.

The district court properly concluded this action is barred by res judicata because Munoz raised, or could have raisd, these claims in prior administrative proceedings against Sprint before the Public Utilities Commission of Nevada. See Owns v. Kaiser Found. Health Plan, inc., 244 F. 3d 708, 713 (9th Cir. 2001); Britton v. City of North Las Vegas, 799 P. 2d 568, 569

(Nev.1990) (per curiam) (res judicata applies to administrative proceedings in Nevada); see also UOP v. United States, 99 F. 3d 344, 347 (9th Cir. 1996) (d0ctrine of administrative finality bars challenges to administrative descisions after the time for making a challenge has expired).

Munoz's remaining contentions lack merit.

AFFIRMED.

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDIE PAUL MUNOZ,
PLAINTIFF – Appellant,
v.
CENTRAL TELEPHONE COMPANY – NEVADA; et al.,
Defendants – Appellees.

No. 05-15295
D.C. No. CV-04-01212-RCJ

JUDGMENT

Appeal from the United States District Court for the District of Nevada (Las Vegas).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada (Las Vegas) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED.**

Filed and entered 03/29/06

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDIE PAUL MUNOZ,
Plaintiff – Appellant,
v.
CENTRAL TELEPHONE COMPANY – NEVADA; et al.,
Defendants – Appellees.
No. 05-15295

DC# cv-04-01212-RCJ
District of Nevada
(Las Vegas)

ORDER

§Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing banc ad no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.